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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/579,033

01/22/2007

Ralf Dunkel

2400.0330000/VLC/CMB

4397

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7590

07/22/2008

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.  
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EXAMINER

CHO, JENNIFER Y

ART UNIT

PAPER NUMBER

1621

MAIL DATE

DELIVERY MODE

07/22/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/579,033	<b>Applicant(s)</b> DUNKEL ET AL.	
	<b>Examiner</b> JENNIFER Y. CHO	<b>Art Unit</b> 1621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) 3 and 5-7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/10/08</u> .   | 6) <input type="checkbox"/> Other: _____                          |

### **Detailed Action**

This office action is in response to Applicant's communication filed on 7/16/08.

Claims 1-7 are pending in this application. Claims 3, 5-7 are withdrawn from consideration being drawn to the non-elected invention.

The 35 USC 112 second paragraph rejection has been withdrawn. The applicant has amended the claimed language to overcome the rejection.

### **IDS**

The information disclosure statement (IDS) filed on 4/10/08 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

### **Claim Rejections - 35 USC 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

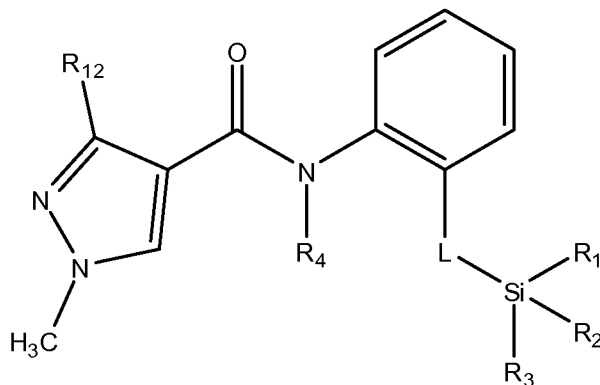
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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ehrenfreund et al. (WO 03/080628).

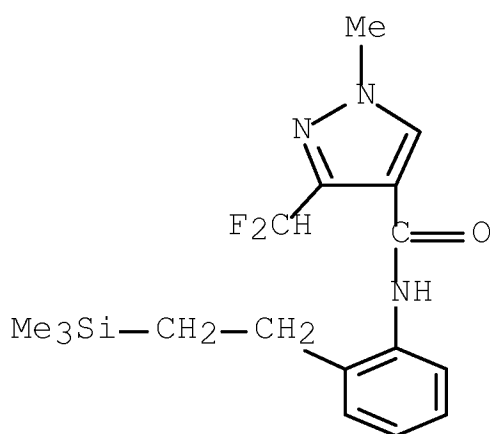
The instant claims are drawn to a pyrazole silylated carboxamides of formula (I), in which A is the radical of the formula (A2), and their compositions with extenders and/or surfactants, with the following base structure:



Ehrenfreund et al. teaches a pyrazole silylated carboxamides and their compositions with surfactants (page 8, last paragraph; page 9, first two lines), with the base structure as shown in the abstract for the compound of formula (I). Ehrenfreund et al. also teaches the following structure (page 7, table A, compound A.45; page 17,

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Table F), with the only difference that a difluoromethyl group is replaced with the chlorine or iodine of Applicant's claims. However, Ehrenfreund et al. also teaches that the heterocyclic ring can be substituted with halogens, including chlorine or iodine (page 1, lines 5-7; page 2, line 1-2, 4).



Ehrenfreund et al. is deficient in that it does not exemplify Applicant's particular silylated carboxamides.

However, it would be prima facie obvious to one of ordinary skill in the art at the time of the invention, to determine the appropriate chemical constituents from Ehrenfreund et al.'s genus structural limitations, to arrive at Applicant's compounds. One of ordinary skill in the art would have been motivated to choose halogen substituents for the heterocyclic ring, particularly since Ehrenfreund et al. teaches the heterocyclic ring can be substituted with halogens, with the reasonable expectation that the compounds would be useful as fungicides and microbiocides. Absent any showing

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of unusual and/or unexpected results over Applicant's particular compound, the art obtains the same silylated carboxamide structure. The expected result would be the efficient production of silylated carboxamide derivatives for the fungicidal and microbiocidal industry.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer Y. Cho whose telephone number is (571) 272 6246. The examiner can normally be reached on 9 AM - 6 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler can be reached on (571) 272 0871. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jennifer Cho  
Patent Examiner  
Art Unit: 1621

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/SHAIENDRA - KUMAR/  
Primary Examiner, Art Unit 1621